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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 18, 2002

APPLICATION OF

NORTHERN VIRGINIA ELECTRIC
COOPERATIVE

CASE NO. PUE-2002-00086

For review of tariffs and terms
and conditions of service

FINAL ORDER

On December 29, 2000, Northern Virginia Electric Cooperative ("NOVEC" or the "Cooperative"), filed an application for State Corporation Commission ("Commission") approval of the Cooperative's plan for functional separation ("Plan") as required by the Virginia Electric Utility Restructuring Act (the "Act"), Chapter 23 of Title 56 of the Code of Virginia (§56-576 et seq.) On December 18, 2001, the Commission issued its Final Order approving NOVEC's application. Ordering paragraph three (3) of that Final Order directed NOVEC to "provide tariffs and terms and conditions of service to the Division of Energy Regulation that conform to this Order and all applicable Commission Rules and Regulations one hundred and fifty (150) days prior to its implementation of retail choice."

Effective April 9, 2002, the new Case Management System requires that the case number format for all Commission orders change from, e.g., PUE010663 to the following: PUE-2001-00663.

On February 1, 2002, NOVEC filed the ordered tariffs and terms and conditions of service with the Division of Energy Regulation in anticipation of commencing retail access in its retail service territory effective July 1, 2002.¹ NOVEC's filings included: (1) Northern Virginia Electric Cooperative - Terms & Conditions for Providing Electric Service, including Retail Access Terms & Conditions; and (2) Northern Virginia Electric Cooperative - Competitive Service Provider Coordination Tariff, including: Competitive Service Provider Agreement, Electronic Data Interchange (EDI) Trading Partner Agreement, Transmission Customer Designation Form, CSP Dispute Resolution Procedure and Aggregator Agreement.

In an Order dated February 21, 2002, in this proceeding, the Commission directed the Cooperative to provide notice to the public and established a procedural schedule for the filing of comments and requests for hearing on NOVEC's application. In that Order, the Commission directed its Staff to investigate the application and file a report detailing its findings and recommendations.

¹ On January 25, 2002, NOVEC, in association with the other electric cooperatives in Virginia, filed a Comprehensive Wires Charge Proposal ("Proposal"), Case No. PUE-2001-00306, Ex Parte: In the matter of considering requirements relating to wires charges pursuant to the Virginia Electric Utility Restructuring Act ("Wires Charge Case"). The Commission rendered a decision in this case on May 24, 2002.

On March 28, 2002, NOVEC filed proof of notice and proof of publication pursuant to the Commission's February 21, 2002, Order.

On March 28, 2002, NOVEC filed its Request for Waiver of Rule 20 VAC 5-312-90 K of the Commission's Rules Governing Retail Access to Competitive Energy Services ("Retail Access Rules"). The Cooperative noted that its intention was to submit a plan for its price-to-compare program no later than April 2, 2002, but development of its plan was dependent upon several factors to be resolved by the Commission in Case No. PUE-2001-00306.

On April 2, 2002, the Commission, inter alia, granted NOVEC's request for a waiver of 20 VAC 5-312-90 K of the Commission's Rules Governing Retail Access to Competitive Energy Services ("Retail Access Rules"). The Commission required NOVEC to submit to the Commission's Division of Energy Regulation a plan for its price-to-compare program no later than 30 days subsequent to the Commission's order in Case No. PUE-2001-00306 resolving the issues related to the frequency of fuel cost adjustments for the cooperatives.

On April 17, 2002, NOVEC filed its Motion for Protective Order. In its motion, NOVEC requested that the Commission, pursuant to 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure, enter a protective order due to the confidential,

proprietary, and sensitive information requested by AES and because AES had not established that it was a party to this proceeding.

On April 22, 2002, Staff filed its Report wherein it recommended that the Commission approve NOVEC's tariffs and terms and conditions with the adoption of certain modifications recommended by Staff.

On April 24, 2002, AES NewEnergy, Inc. ("AES") filed its Notice of Participation in this matter and its opposition to NOVEC's Motion for Protective Order.²

On May 1, 2002, AES filed its comments on the Staff Report. In its comments, AES stated that it did not agree with Staff's recommendations regarding calculation of the Competitive Transition Charge ("CTC") calculation. AES stated that NOVEC had not presented any evidence that stranded costs exist. AES argued that the wires charges proposed by NOVEC are substantial and, in all likelihood, would prevent meaningful competition in NOVEC's service territory.³ AES agreed with Staff's use of

² Interrogatories issued by AES have been answered by NOVEC rendering this issue moot. Furthermore, AES has established itself as a participant in this proceeding. Therefore, it is not necessary to decide the issue of NOVEC's Motion for Protective Order.

³ The Commission notes that under § 56-583 of the Virginia Electric Utility Restructuring Act ("Restructuring Act"), wires charges serve as a "proxy", on a utility by utility basis, of stranded costs. Therefore, no actual determination of stranded costs is necessary as a precondition of receipt of wires charges.

ODEC's fuel adjustment factor in place of NOVEC's current WPCA⁴ factor for the adjustment of base generation rates in the determination of wires charges. AES further recommended that any market prices established should be increased by an appropriate percentage to represent any reserve requirements applicable in NOVEC's service territory.

With respect to Staff's recommendation regarding unbundled tariff and rate schedules for all customer classes, AES concurred with NOVEC's agreement to allow termination of interruptible sales agreements upon the customer's receipt of service from an alternative energy supplier. However, AES asserted that wires charges are inappropriate for a customer that does not impose any firm supply requirement on the Cooperative because the Cooperative does not incur any long term stranded costs for an interruptible customer.⁵

AES commented on NOVEC's request to offer and make unregulated sales of electric power (Subparagraph F) to NOVEC customers within its certified service territory. AES recommended that these unregulated supply services be conducted by a Competitive Service Provider ("CSP") affiliate of NOVEC to create a level playing field. AES expressed concern that NOVEC

⁴ Wholesale Power Cost Adjustment, a pass-through mechanism for recovery of NOVEC's purchased power.

⁵ See footnote 3.

would not have to comply with all of the requirements placed on CSPs with respect to unregulated supply services and that NOVEC would have access to marketing information not available to other CSPs. Finally, AES expressed reservations about NOVEC's request (i) to be exempt from the application of wires charges in conjunction with unregulated power sales; and (ii) for authority to terminate service for non-payment of special supply service. AES argued that under current regulations, CSPs would not receive similar treatment.

On May 2, 2002, NOVEC filed its Response to the Staff's Report. In its Response, the Cooperative stated that it did not agree with a further adjustment to market price relating to transmission and ancillary expenses and opposed Staff's adjustment to remove transmission and ancillary expenses from that calculation. NOVEC stated that its adjustments to the Base Market Price were not associated with § 56-583.A of the Restructuring Act and do not reflect transmission and ancillary service expenses necessary to sell generation or wholesale power off-system. NOVEC stated that the purpose of the transmission and ancillary expense adjustment as proposed is to provide a market price that is consistent with the capped generation and transmission rates previously approved by the Commission. NOVEC argued that its approved capped generation rates included generation, transmission and ancillary service costs, and that

NOVEC's Base Market Price also must include a comparable level of transmission and ancillary service costs - otherwise, according to NOVEC, the transmission and ancillary service costs would show up in the CTC and shopping customers would pay twice for transmission service.

The Cooperative also responded to Staff's recommendation that no wires charge be permitted until documents confirming the agreements between ODEC and the Cooperative relating to the disposition of wires charge revenues are received. NOVEC stated its intention to satisfy that obligation, but disagreed with Staff's suggestion that § 56-584 requires Commission approval of the allocation of wires charge revenue.

In its remaining responses to the Staff Report, the Cooperative generally agreed with the Staff's recommendations regarding tariff changes, wire charges, and terms and conditions of service.

NOVEC objected, however, to Staff's recommendation that the Cooperative identify more specifically the types of documents that would satisfy its requirement that an applicant be required to prove that he or she is the owner or bona fide lessee of the subject premises. NOVEC contends that there is no need to change the language in its proposed Terms and Conditions that requires a customer to provide a copy of a signed lease or a

deed to verify this authority to require electric service at the specific location.

With regard to the Staff's recommendations concerning customer deposits, NOVEC took issue with the Staff's modification of the Cooperative's proposal to change the basis on which customer deposits are determined. The Staff had recommended NOVEC's modification be denied because the capped rate provisions of the Restructuring Act bar such revisions. In its Response, NOVEC maintained that the rate cap provisions should not be construed as a bar to modifying customer deposit provisions and the Cooperative states that the change reflects an appropriate policy decision for its business.

With regard to the Staff's recommendations concerning billing and payment, NOVEC took issue with the Staff's modification of NOVEC's requirement for shopping customers to bring their budget balance to zero. The Staff had recommended that NOVEC allow retail access customers to retain budget billing for the distribution portion of their bills and to allow shopping customers to switch either after bringing their budget balance to zero or upon making acceptable payment arrangements with the Cooperative. In its Response, NOVEC maintained its position that requiring a customer switching to a CSP to bring its budget billing account to zero prior to switching is a good business practice.

With regard to Staff's recommendation in Section RVII-F, retail access terms and conditions, unregulated competitive energy service, Staff stated that NOVEC had not provided tariffs for this service, noting that NOVEC does not intend to include wire charges as a component of the distribution charges for this unregulated energy service, and that the retail access tariffs for distribution service provided by NOVEC included these charges. In its Response, NOVEC agreed to submit the appropriate tariffs to the Commission prior to implementation of this service.

With regard to the Staff's recommendations concerning the CSP Coordination Tariff, NOVEC generally agreed with the Staff, but took issue with Staff's recommendation concerning the definition of "credit amount," the security deposit required of a CSP. NOVEC disagreed with the Staff's recommendation that the credit amount should be based on two (2) months of projected CSP payments, as in the case of the Cooperative's retail customers, rather than the three (3) months as proposed by NOVEC. NOVEC maintained its position that its relationship with a CSP is different than the Cooperative relationship with its member-customers, in that the CSP is not NOVEC's customer. As a result of its duty to ensure reliable power supply service to CSP customers, NOVEC's position is that requiring a credit amount

equivalent to three (3) months of CSP billings is essentially a minimum reasonable credit amount for the level of risk assumed.

NOVEC also disagreed with Staff's recommendations relative to coordination of customer activities, specifically Staff's addition of "or as soon as possible" to 30-day prior notice requirement for the initiation of planned, large-volume customer activity by a CSP. NOVEC's position is that a 30-day notice requirement is not unreasonable and Staff's addition of "as soon as possible" renders the value of the provision meaningless.

Finally, NOVEC disagreed with Staff's recommendation concerning billing disputes, i.e., that the first sentence of Article 11.6 in the CSP Coordination Tariff conflicts with item 8 of the proposed Dispute Resolution Procedure.⁶ NOVEC maintains that requiring payment of disputed amounts by CSPs will tend to spur settlement negotiations and avoid prolonged complaint proceedings.

With respect to the issue of fee schedules and collection of wire transfer fees, NOVEC, in its Response, agreed to drop the proposed additional \$25 fixed late payment charge, forego the proposed credit card processing fee, and modify its CSP

⁶ Article 11.6 provides as follows: If disputes arise regarding an invoice, CSP must pay the full disputed invoice on or before the delinquent date. ... Dispute Resolution: 8: If a dispute involves the accuracy of invoiced charges, the Cooperative will note the account with the disputed charge and exclude the charge from any late payment fees or other collection action. ...

Coordination Tariff to allow for other methods of payment while retaining the option of wire transfers with the associated fee.

With regard to the Staff's suggestion that the CSP, Trading Partner, and Aggregator Agreements were submitted by NOVEC only for informational purposes and to provide a guide for minimum requirements, NOVEC maintained in its Response that these agreements should instead be recognized as part of the Cooperative's filed and approved CSP tariff. NOVEC stated that the Commission's acceptance of these agreements supports efficient operation and prevents charges of discrimination in the treatment of CSPs.

NOW THE COMMISSION, having given due regard to the Cooperative's application, Staff's Report, the subsequent pleadings, AES' comments, and applicable law, approves NOVEC's application, subject to the modifications detailed herein.⁷ In reaching this decision we have given due regard to the detailed comments of the parties participating in this proceeding, most of whom, while supportive of NOVEC's application, suggested certain conditions for this Commission's approval.

We incorporate, by reference, our findings in the Wires Charge Case (Case No. PUE-2001-00306) reflecting the appropriate

⁷ Prior to implementation of retail choice in its service area, NOVEC must file both a price-to-compare plan as described in the April 2, 2002, Order in this proceeding, and copies of the agreement between ODEC and NOVEC for the disposition of wires charges revenue.

fuel adjustments and wires charge calculation for this Cooperative. In addition, we find that the wires charges calculated by NOVEC are effective until December 31, 2003, in conformance with Ordering Paragraph (5) of Case No. PUE-2001-00306.

With respect to AES' comments regarding the Commission's establishing market prices for CTC ("wires charge") calculation, in its November 19, 2002, Final Order, Ex Parte: In the matter of amending requirements relating to wires charges pursuant to the Virginia Electric Utility Restructuring Act, PUE-2001-00306, the Commission stated in Ordering Paragraph (5):

Incumbent electric utilities seeking to impose a wires charge in calendar year 2003 and beyond shall make annual filings by July 1 of each year for any proposed revisions in their fuel factor and corresponding changes in capped rates, and for market price proposals.

Therefore, the Commission has provided for an appropriate venue for AES to submit its recommendations concerning market prices as they relate to wires charges.

With respect to AES' comments regarding unbundled tariff and rate schedules for all customer classes, specifically the interruptible service schedule (IS-3-V), we find that NOVEC's interruptible service schedule is intended to provide a capacity credit for customers who agree to interrupt their demand during peak generation periods. In Case No. PUE-2001-00005, we

approved unbundled rates for this schedule. We, therefore, direct NOVEC to provide the appropriate retail access distribution tariff including wires charges for this customer class.

We also find that NOVEC's agreement to allow termination of interruptible sales agreements upon the customer's receipt of service from a CSP appropriate as long as NOVEC provides the necessary information in its schedule as requested by the Staff.

With respect to AES' comments on NOVEC's request to offer and make unregulated sales of electric power (Subparagraph F) to NOVEC's customers within its certified service territory, under § 56-231.34:1 of the Code of Virginia, Virginia's electric cooperatives are permitted to make direct, unregulated sales of electric power within their service territories without having to form affiliates to do so. This section of Chapter 10 of the Code of Virginia makes no provision for the application of wires charges. Additionally, § 56-583B of the Restructuring Act limits the application of wires charges to customers of suppliers other than the incumbent electric utility or to customers subject to and receiving default service. Neither of these conditions is applicable to this special supply service. However, Staff noted that NOVEC had not filed appropriate distribution tariffs. Therefore, we direct NOVEC to file retail access distribution tariffs with the Division of Energy

Regulation at least sixty (60) days prior to its implementation of unregulated energy supply service.

With respect to AES comments on NOVEC's request for authority to terminate service for nonpayment of unregulated energy supply service, we note that the proposed practice is prohibited by the Retail Access Rules (20 VAC 5-312-90 G). With regard to disconnections for nonpayment of service charges, NOVEC may disconnect the distribution service of these customers for non-payment of regulated service charges only. We, therefore, direct NOVEC to modify this tariff provision consistent with the Retail Access Rules.

With respect to the issue of customer deposits, we agree with the Staff's recommendation that the Cooperative's change in methodology for calculation of customer deposits should be denied. We, therefore, direct NOVEC to retain the current language on deposits.

With respect to the issue of "credit amount" as defined in the CSP coordination tariff, we agree with Staff's recommendation that the credit amount be equivalent to two months' CSP payments to the Cooperative, comparable to the deposit requirements for retail customers.

With respect to the issue of the provision of 30 days as adequate notice for implementation of planned, large-volume customer activity by a CSP, the provision of notice for

anticipated terminations of service by a CSP is adequately covered under the Retail Access Rules (20 VAC 5-312-80 M and O) and the VAEDT plan. For other large volume marketing activity, we agree with NOVEC that advance notice from a CSP could assist in coordination of large volume activity, but to place a hard and fast rule on a CSP could deter development of competition. Therefore, we direct NOVEC to modify the notice provision to incorporate Staff's "as soon as possible" language for large volume enrollment activities.

With respect to the Cooperative's Dispute Resolution Procedure, we find that item 8 should be conformed with Article 11.6 of the CSP Coordination Tariff as recommended by Staff.

With respect to the issue of fee schedules and collection of wires transfer fees, we adopt these changes as proposed by NOVEC.

With regard to the CSP, Trading Partner, and Aggregator Agreements, the Commission in Case No. PUE-2000-00584 included these same types of agreements as attachments to Virginia Power's CSP Coordination Tariff. NOVEC proposes to treat them in the same manner, and we accept their inclusion as attachments to the CSP Coordination Tariff.

With respect to the issue of including transmission and ancillary expenses in the market price calculation, we concur

with NOVEC's explanation of its calculation in its Response and its view that a further adjustment is not appropriate.

Therefore, the CTC calculation as proposed by NOVEC is approved.

With respect to the issue of the submission by a bona fide lessee of a lease agreement for authority to institute service, we find that strict adherence to the Cooperative's limitation of proof solely to a deed or lease may raise barriers to obtaining service in some areas served by Cooperatives in the Commonwealth. We will, therefore, direct NOVEC to accept, in lieu of a formal lease agreement, for purposes of ensuring flexibility in the types of documents allowed for submission of proof of ownership, a letter from the actual owner verifying the applicant as a bona fide lessee.

With respect to the requirement that shopping customers bring their budget balance to zero prior to switching a CSP, we find that such a requirement would be a hindrance to open access in the marketplace. We will, therefore, adopt the Staff's recommendation that NOVEC provide payment arrangements for the non-distribution portion of the customer's outstanding balance as an alternative to taking budget balances to zero for shopping customers. With respect to the provision of budget billing for CSP customers, we direct NOVEC to continue to offer budget billing for the regulated distribution service.

Accordingly, IT IS ORDERED THAT:

(1) NOVEC's tariffs and terms and conditions of service amended as recommended by Staff and subject to the modifications discussed herein are hereby approved.

(2) NOVEC shall file its amended tariffs no later than 15 days after the date of this order;

(3) NOVEC's initiation of retail choice is conditioned upon the timely receipt of its wires charge allocation agreements with ODEC and documents as required in Ordering Paragraph (2).

(4) This case is hereby dismissed, and the papers shall be placed in the file for ended causes.